IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.342 OF 1996

Shri Premjibhai Khepar Ruparel. ..Petitioner.

V/s.

M/s.Kuber Builders. ..Respondent.

Mr.Venkatesh Dhond for Hemant Sethi for petitioner.

Mr.C.M.Kothari for respondent No.1 and 2.

Mr.Anil Singh for respondent No.3.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 31, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings on record.

2. The grievance in this petition is regarding wilful breach of order of injunction passed by this Court on 28th April, 1993 in Civil Application No.2444 of 1993 in Appeal From Order No.617 of 1993 arising from Notice of Motion No.1914 of 1993 in Bombay City Civil S.C.Suit No.2538 of 1990. This Court passed the following order.

> "Interim Order in terms of Prayers (a) (i) (ii) and (iii) granted."

Relevant reliefs reads thus:

> "(i) Selling, alienating, transferring, encumbering or disposing off the flat Nos.1005 & 1006 on the 10th floor of the building known as Shalimar B or Vaishali B Situate at Kopargaon Estate, Love Lane, Mazgaon, Bombay 400 010 in favour of any third party.
>
> (ii) from signing or executing any agreements papers or documents relating to the said flats in favour of any third party so as to affect or prejudice the rights of the Plaintiff in respect of the said two flats or any part thereof or any of them in any manner whatsoever.
>
> (iii) from parting with possession of the said two flats or any of them or any part of them in favour of any third party or from inducting any third party into the said two flats or any of them or any part of them for using and/or occupying them on any basis or footing whatsoever, in any manner whatsoever."

3. In the present petition, we are concerned with the flat No.1006 and the allegation is about wilful breach of directions contained in clause (ii) and (iii) referred to above. According to the petitioner inspite of the order dated 28th April, 1993 the respondents in particular Respondent No.1 firm executed Provisional Receipt in favour of respondent No.3 in the sum of Rs.40,000/- towards balance payment of costs of flat No.1006 in B-wing, Vaishali, Lovelane, Byculla, Bombay 400 010 and also

by another letter dated 19th July, 1993 allowed the respondent No.3 to hand over ad-hoc possession of the said flat for the limited purpose of carrying out sundry furniture decorating and reflooring work in the said flat.

4. I shall deal with the allegation of handing over of possession of the suit flat, as is alleged by the petitioner, which is stated to have resulted in wilful disobedience of the order in terms of prayer clause (iii) as referred to above.

5. Going by the pleadings and documents on record, it is amply clear that the possession of the suit flat was never made over to the respondent No.3. The respondent No.3 instead, in 1995, has instituted suit being Suit No.4788 of 1995 in which it is clearly asserted that inspite of assurance given under letter dated 19th July, 1993, the respondent No.1 has failed to hand over possession of the suit flat to him. On such assertion appropriate relief was claimed by the respondent No.3 against the respondent No.1 in the said suit. Besides, even if the documents pressed into service by the petitioner, if accepted as it is, it is seen that when the court receiver had visited the premises on 2nd January,

1996 it was noticed that the premises were closed and locked. On enquiry it transpired that one Juzar N. Merchant was in possession of the said flat for last one and half year. From the subsequent report of the Court receiver dated 7th January, 1997 it is amply clear that the said J.N.Merchant claimed to have been put in occupation of the said flat by Jayant Kasliwala landlord in terms of the agreement executed between them some time in February, 1995. In other words, the grievance of the respondent No.3 in the suit filed by him that he was not put in possession of the suit flat inspite of agreement executed between them and the assurance given in terms of letter dated 19th July, 1993 till the institution of the suit in 1995 stands substantiated from the documents relied upon by the petitioner himself. In my opinion, it is not possible to record a finding that respondent No.1 has parted possession of the suit flat in favour of the respondent No.3, as is alleged by the petitioner. Indeed, the respondent No.1 issued letter dated 19th July, 1993. However, the fact remains that the respondent No.3 was never put in possession of the suit flat by the respondent No.1 until 1995 as is stated by the respondent No.1 in the suit between them interse.

6. What is relevant to note is that there was one more suit pending between the respondent No.1 developer and the land owner Kasliwala being Suit No.9704 of 1987. In the said suit certain arrangement was arrived at between the respondent No.1 and the land owner Kasliwala. On the basis of which matter was amicably settled between them interse and consent terms came to be filed in the said suit whereunder Kasliwala took over all the obligations and liabilities confirmed and undertaken by and on behalf of the respondent No.1 developers and the said obligations and liability were transferred to and accepted by Kasliwala.

7. As is mentioned earlier, the suit flat has been subsequently transferred in favour of Mr. Merchant by Jayant Kasliwal, which has already come on record. Thus understood, it is not a case of parting with the possession of the suit flat by the respondent No.1 as such. If it is so, respondent No.1 cannot be made responsible for the situation of creating third party interest in the flat in question by some other person. It is relevant to notice that Kasliwala had been added as defendant in suit No.2538 of 1990. However, they have not been named as respondent contemnors in the present petition. If at

all there is cause for initiating present action that can be against the said land owner Kasliwala who has taken over all liability and obligations from the respondent No.1 in terms of the consent terms filed before the court on 26th July, 1993. It is also the case of the respondent that the fact that the respondent No.1 has no concern with the suit property any more was placed on record in the suit filed by the petitioner on 24th November, 1993. Indeed, it is the case of the petitioner that the petitioner became aware about the alleged transfer and/or creating of third party interest in the suit property under the order passed by this court in August, 1996 when the affidavit was filed by respondent No.3 in the Chamber summons No.872 of 1996 and soon thereafter, the petitioner has approached this court.

8. Be that as it may, as found earlier, it is not possible to conclusively hold that the respondent No.1 who had right and interest in the suit property upto 26th July, 1993, was responsible for handing over the possession of the suit flat to any third party. On this finding, it is not possible to accept the stand of the petitioner that the respondent No.1 or for that matter other respondents are liable to be proceeded for wilful disobedience of the order passed

by this court on 28th April, 1993 in terms of clause (iii) referred to above.

9. That takes me to the grievance of the petitioner that the respondents in particular respondent No.1 is responsible for wilful breach of the order passed in terms of the clause (ii). In that, respondent No.1 accepted amount of Rs.40,000/- from respondent No.3 by cheque towards balance payment of costs of flat No.1006. The relief which was granted against the respondents in terms of clause (ii) is to restrain the respondents from signing or executing any agreements papers or documents relating to the said flat in favour of any third party so as to affect or prejudice the rights of the plaintiff/petitioner in respect of the suit flat or any part thereof in any manner, whatsoever. Indeed, it is possible to accept the stand taken by the petitioner that the provisional receipt for the amount of Rs.40,000/- issued by the respondent No.1 in favour of the respondent No.3 will be covered by the wide words of prayer clause (ii). Even so, on going through the pleadings on record, I am inclined to accept the stand taken by the respondent No.1 in particular that the said payment was accepted under mistaken belief that there was no inhibition in

accepting such payment in terms of agreement executed in favour of respondent No.3 as back as 10th September, 1986; Consideration so received however, did not create new rights in favour of the third party but only in consonance with the agreement which was executed in favour of the respondent No.3 much earlier to the order of injunction. If this explanation is accepted, which I am inclined to accept, it is not possible to conclude that it is a case of wilful disobedience of the order of the court so as to result in action of civil contempt against the respondent No.1. In any case, as the respondents have tendered unconditional apology on affidavit and the respondent No.2, who is personally present in the court reiterates unconditional apology for issuance of such receipt, in my opinion, it will not be appropriate to precipitate the matter any further.

10. Accordingly, this petition is disposed of giving liberty to the petitioner to take recourse to any other remedy, as may be permissible in law. Notice issued to the respondents stands discharged.